Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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OFFICE OF THE SECRETARY

In the Matter of	)
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Access Charge Reform	) CC Docket No. 96-262
	)
Price Cap Performance Review For Local Exchange Carriers	) CC Docket No. 94-1
	)
	)
Low-Volume Long Distance Users	) CC Docket No. 99-249
	)
Federal-State Joint Board on Universal Service	) CC Docket No. 96-45

TO: The Commission

COMMENTS OF THE SMALL COMPANY COMMITTEE OF THE WISCONSIN STATE TELECOMMUNICATIONS ASSOCIATION

The Small Company Committee of the Wisconsin State Telecommunications Association ("WSTA-SCC") hereby comments upon the Commission's Notice Of Proposed Rulemaking (Access Charge Reform), FCC 99-235, released September 15, 1999, regarding a proposal by the Coalition for Affordable Local and Long Distance Services ("CALLS") to modify the interstate universal service and interstate access charge mechanisms for price cap incumbent local exchange carriers ("ILECs").

WSTA-SCC understands that the CALLS proposal, on its face, is limited to price cap ILECs, and that it will not apply directly and immediately to WSTA-SCC members and other rural telephone companies. However, WSTA-SCC is concerned that the CALLS proposal will become a model for future changes in the access charge mechanism for smaller ILECs. This concern is not unwarranted – for example, the access revisions adopted by the Commission for price cap carriers in CC Docket No. 96-262 served as the predominant model for the access changes later proposed by the Commission for rate of return carriers in CC Docket No. 98-77. Likewise, if and when the Commission formally or informally limits the aggregate size of future federal universal service mechanisms, the new $650 million Access Universal Service Fund ("Access USF") proposed for price cap ILECs will reduce the amount of universal service support available for WSTA-SCC members and other rural telephone companies.

Therefore, the WSTA-SCC opposes the CALLS proposal. It asks the Commission: (a) to recognize the substantial efforts and investments made by ILECs to provide quality exchange access facilities and to reject access "reform" proposals that give interexchange carriers ("IXCs") a free (or virtually free) ride on ILEC networks; (b) to refuse to establish a new $650 million Access USF for the exclusive benefit of the large price cap ILECs; (c) to refuse to burden residential and small business telephone customers with additional flat rate monthly charges; and (d) to reject the promises of IXCs that they will pass access charge savings on to residential and small business customers unless and until IXCs establish a record of compliance with such promises.

Background

The WSTA-SCC represents forty-eight small, unaffiliated ILECs serving mostly rural exchanges in the State of Wisconsin. WSTA-SCC members are locally owned and managed, and range in size from 222 access lines to 34,236 access lines. These small carriers are relied upon by their rural communities for jobs, economic development and educational opportunities, as well as for the provision of telecommunications services responsive to local needs. They have a tradition of providing state-of-the-art facilities and services to their rural customers, and of doing so at local service rates comparable to those charged in the urban areas of Wisconsin.

WSTA-SCC members and their customers desire to maintain and extend their record of providing high quality, modern, and personalized service in rural Wisconsin. However, during recent years, WSTA-SCC members have relied upon access charges and universal service support for a substantial portion (approximately 55 to 83 percent) of the revenues needed to sustain their operations. If these revenue sources were reduced substantially, WSTA-SCC members lack the resources and economies of scale to withstand the dollar losses without substantial service degradations or rate increases.

In contrast, CALLS is comprised of two of the three largest current IXCs (AT&T and Sprint) and three of the four largest remaining price cap ILECs (Bell Atlantic/GTE, BellSouth and SBC). Whereas CALLS attempts to characterize itself as a coalition of ILECs and IXCs, its proposals are **not** compromises negotiated at arms' length between two groups of telecommunications carriers with conflicting interests. Rather, the ILEC members of CALLS have expended extensive effort and resources during recent years to secure regulatory permission to provide toll service pursuant to the provisions of Section 271 of the Communications Act of 1934, as amended. Because of the primary focus of **all** CALLS members upon the provision of toll services at present and/or in the immediate future, CALLS is not a true or effective representative of ILEC interests in any respect. It is notable that CALLS does not include **any** of the approximately 1,100 small and mid-sized ILECs that are primarily focused upon the provision of local exchange and exchange access services, and that are not making vigorous and repeated efforts to obtain Section 271 authorizations to enter the toll business.

Although CALLS claims that its proposals are "voluntary" and that they will not apply to ILECs choosing not to become subject to them, this assertion is not realistic. If adopted, the CALLS proposals will apply to more than 75 percent of U.S. access lines. Once the CALLS proposals become applicable to such a large portion of the industry, there will be constant pressure from IXCs to have the Commission implement them nationwide and apply them to all ILECs.

IXCs Must Compensate ILECs Reasonably For Access To Local Exchange Networks

It is well recognized that local exchange facilities constitute the most complex, difficult and expensive portion of the public switched telephone network to construct and maintain. In rural Wisconsin, WSTA-SCC members must employ relatively long loops over farmland and forests and around lakes, in order to serve widely scattered households in sparsely populated areas (often with densities of less than four subscribers per route mile). Moreover, the central office switches of WSTA-SCC members serve relatively small customer bases, and therefore require relatively large investments per subscriber without the ability to generate significant economies of scale.

The CALLS proposals disregard the difficulty and expense of constructing and operating local exchange networks, and the value to IXCS of having ready access to existing local exchange networks. IXCs will be given a free ride on the local loop via the elimination of the Presubscribed Interexchange Carrier Charges ("PICCs") and Carrier Common Line Charges (CCLCs") imposed upon then (immediately with respect to residential and single-line business subscribers and after a transition for multiline business subscribers), while loop costs will be recovered entirely from local exchange customers via Subscriber Line Charges ("SLCs"). In addition, IXCs are to receive an approximate 50 percent reduction in traffic sensitive charges for switched access.

WSTA-SCC vigorously objects to the proposed shift of all local loop costs from IXCs to local subscribers. IXCs derive significant and continuing benefits from their ability to originate and terminate their traffic over local loop facilities, without having to bear the responsibility or expense of constructing and maintaining them. There is no legal, policy or equitable reason supporting free and unlimited access by IXCs to the local loop.

Both IXCs and local service subscribers require ILECs to construct and maintain local loop facilities. In fact, both IXCs and subscribers demand that ILECs furnish loops at quality levels sufficient to accommodate a variety of voice and data services. Were an ILEC to permit its loop facilities to deteriorate below minimally acceptable quality levels, it would be subject to complaints from IXCs as well as from local service subscribers.

Hence, the cost and benefits of the local loop are shared by and attributable to both IXCs and local service subscribers, and should be recovered from both. It is wholly unreasonable and inequitable for CALLS to expect **all** of the joint and common costs of local loops to be shifted to and borne by local service subscribers, while existing and future IXCs get a free ride.

IXCs receive a significant benefit from their use of the local loop and other joint and common facilities owned by ILECs. However, CALLS proposes that they receive these benefits free. As I write these comments, I'm sitting in an airport watching the United Airlines personnel load cargo onto planes. The cost of flying me from San Antonio to Madison is the same whether or not there is any cargo on the plane. However, I suspect United Airlines charges the cargo companies more than the incremental cost for transporting those goods. They also pay some of the joint and common costs. The reason for this is that they receive a benefit. That benefit is a marketable good with value. Passengers pay less because United Airlines recovers some of the joint and common costs from cargo companies

Many of the features of central office switches (e.g., upgrades for four-digit Carrier Identification Codes) are required to accommodate IXCs. Yet, CALLS has made no apparent attempt to determine whether the deeply cut traffic sensitive access rates that it proposes bear any relation to the substantial switch costs imposed upon ILECs by their IXC customers, or to the substantial benefits enjoyed by IXCs from the handling of their originating and terminating traffic by ILEC switches. It is notable that the slashed \$0.0055 and \$0.0065 per minute switched access rates proposed by CALLS are a small fraction of the Milwaukee switched access charges rates of AT&T's Teleport competitive local exchange carrier ("CLEC") subsidiary (\$0.01992 per minute) and of the MCI Metro CLEC operation (\$0.024074 per minute).

CALLS cannot assert accurately that PICC, CCLC and traffic sensitive access charges are passed through completely to local service subscribers, either directly or indirectly via higher toll rates, in any event. This might be true if IXCs were still monopolies or regulated utilities. However, in the allegedly competitive toll industry, most IXCs lack the market power to shift all of their costs and cost increases immediately to their customers. Rather, by asking the Commission to convert the PICCs and CCLCs paid by IXCs into SLCs paid by subscribers, CALLS is trying to get the Commission to do the dirty work of shifting to the public the costs caused in order to provide IXCs with access to the local loop.

Finally, to the extent that the CALLS proposals do not shift local loop and switching costs from IXCs to local service subscribers, such costs will be borne by ILECs and their stockholders. In other words, a Commission order requiring ILECs to give IXCs free access to their local loop facilities and reduced cost access to their central office switching facilities would be an unconstitutional taking of private property for public use without just compensation in violation of the Fifth Amendment to the United States Constitution. While a "taking" is traditionally associated with the physical invasion of property, Penn Cent. R.R v. New York, 438 U.S. 104, 124 (1978), regulation of property may rise to the level of a taking. Pa. Coal Co. v. Mahon, 260 U.S. 393,415 (1922). In particular, the regulation of utility rates constitutes a "taking" if the prescribed rates are confiscatory. FCC v. Florida Power Corp., 480 U.S. 245, 253 (1987); Dusquesne Light Co. v. Barasch, 488 U.S. 299, 308 (1989). See also Jersey Central Power & Light Co. v. FERC, 810 F.2d 1168, 1189-1192 (D.C. Cir. 1987)(equating unreasonable rates and confiscation).

The Commission Should Not Establish
A $650 Million Access USF For Price Cap Carriers

The WSTA-SCC notes that the $650 million Access USF proposed by CALLS is almost as large as the Universal Service Fund ("USF") at the time that the Commission determined in 1993 (when the USF had grown to $700 million) that the USF had to be "capped" on an "interim basis" to control its alleged excessive and irregular growth. Report and Order (Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board), CC Docket No. 80-286, 9 FCC Rcd 303 (1993).

The WSTA-SCC is very concerned that the Commission will formally or informally limit the aggregate size of the various federal universal service support mechanisms at some future date, and thereby limit the support received by the rural telephone companies to whom Section 254 of the Communications Act was designed primarily to apply. In paragraph 19 of its recent Sixteenth Order On Reconsideration In CC Docket No. 96-45, Eighth Report And Order In CC Docket 96-45, Sixth Report And Order In CC Docket 96-262, FCC 99-290, released October 9, 1999, the Commission declared that it did not expect that its universal service contribution factor would exceed 8 percent of interstate and certain international end-user telecommunications revenues in the near future. However, the current universal service contribution factor is almost 6 percent of interstate and international revenues, and yet it has not even been adjusted for the increases in USF support for non-rural carriers which will result from implementation of the Commission's new proxy-based USF system on January 1, 2000.

If the new $650 million Access USF proposed by CALLS for the large price cap ILECs is added to existing and scheduled new USF programs, it will put increased pressure upon the 8 percent USF contribution ceiling **before** the universal service support system is revised for rural telephone companies in 2001 or thereafter. This will mean reduced support for high cost rural areas served by the small carriers – that is, for the areas, carriers and customers most in need of increased support. The large price cap carriers are not serving Rural America – in fact, US West appears to be selling off its rural exchanges as fast as its attorneys can negotiate and complete the transactions.

The Commission Should Refuse To Burden Local Service Subscribers With Additional Flat Rate Charges

The CALLS proposals for increased SLCs and a new $650 million Access USF will impose substantial rate increases upon local service customers. Residential customers will see their monthly SLCs double from $3.50 to $7.00, at the same time that they are subjected to increased pass-throughs of contributions to universal service and other federal and state programs. Business customers will pay combined monthly SLC/PICCs of $13.20 per line, as well as increased pass-throughs of contributions. At some point, there is going to be a substantial backlash by residential and business subscribers against what they will perceive as substantial rate increases.

The Commission Should Not Further Reduce Access Rates Until IXCs Pass Such Reductions Through To Their Toll Customers

Nothing in the CALLS proposals ensure that customers subjected to higher SLCs and other increased monthly charges will receive comparable savings in toll rates. If past is prologue, those customers will receive no benefit from their IXCs and may even be charged higher toll rates. In recent years, as IXCs enjoyed substantial access charge reductions, they have nonetheless frequently increased their raised basic toll rates, and added various new minimum charges and surcharges.

In fact, the primary impact of several years of substantial access rate reductions has been increased profits and cash flows for the large IXCs. Rather than passing their access cost reductions through to their toll customers, the large IXCs have used their increased profits for other purposes – namely: (a) AT&T has acquired enough cable television companies to become the nation's largest cable operator; (b) Sprint is constructing a nationwide Broadband Personal Communications Service ("PCS") network; and (c) MCI is acquiring Sprint.

In Wisconsin, IXCs have failed to pass their recent access cost savings on to their toll customers. Legislation supported by ILECs and IXCs was enacted by the Wisconsin legislature and was signed by Governor Thompson in 1994. Although the statute reduced ILEC intrastate access rates by more than $50 million per year, there was no corresponding reduction in intrastate long distance rates by the large intrastate toll carriers.

Conclusion

Particularly to the extent that it poses a danger of becoming an industry precedent or model, the WSTA-SCC opposes the CALLS proposal. WSTA-SCC urges the Commission: (1) not to adopt an access pricing philosophy that gives IXCs a free ride on ILEC networks; (2) not to establish a new $650 million Access USF for the large price cap carriers; (3) not to burden residential and small business customers with additional flat rate charges; and (4) not accept the promises of large IXCs that they will pass access cost reduction on to their residential and small business customers until they keep their prior promises.

Respectfully submitted,
SMALL COMPANY COMMITTEE OF THE WISCONSIN STATE TELECOMMUNICATIONS ASSOCIATION

By Ray J. Riordan /GJD
Ray J. Riordan
Executive Vice President &
General Counsel
6602 Normandy Lane
Madison, WI 53719
(608) 833-8866

By Gerard J. Duffy
Gerard J. Duffy
Blooston, Mordkofsky, Jackson & Dickens
2120 L Street, NW (Suite 300)
Washington, DC 20037
(202) 659-0830

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CERTIFICATE OF SERVICE

I, Michael B. Adams, Jr., hereby certify that I am an attorney with the law firm of Blooston, Mordkofsky, Jackson & Dickens and that a copy of the foregoing **"Comments of the Small Company Committee of the Wisconsin State Telecommunications Association"** was served this 12th day of November, 1999, by hand delivery or by first class mail as indicated, to the persons listed below.

* Wanda Harris.
Competitive Pricing Division
Common Carrier Bureau
Federal Communications Commission
445 Twelfth Street, S.W. – Room 6-A320
Washington, D.C. 20554
(three copies)

* International Transcription Service
1231 20th Street, N.W.
Washington, D.C. 20037
(*diskette copy*)

John Nakahata, Esq.
Evan R. Grayer, Esq.
Harris, Wiltshire & Grannis, LLP
1200 Eighteenth Street, N.W.
Washington, D.C. 20036

* Hand delivery

Michael B. Adams, Jr.

Michael B. Adams, Jr.